Importance of Continuing Legal Education

The sad truth is that you don't get all your legal education in a law school. You get a lot. You are superbly equipped in certain ways. You have a high degree of analytical skill. You are well equipped to isolate the legal issues in a complex set of facts. You understand the fundamental legal concepts and you are able to apply them to the issues. But the skill you don't have is a detailed how-to-do-it skill -- Let's see what it is.

We shall look at a partnership. That is a very common way of doing business, particularly in smaller communities. You don't have to get the State's permission, as you do for a corporation. You don't have any stock issue to worry about or board of directors to choose and to elect. Practically, it's a down-to-earth organization. That doesn't mean, however, that it is a simple organization from a legal standpoint. In fact, there's a good deal of fairly complex law about partnerships. You see, in a partnership any partner can "bind" the others. But any time you have one person "binding" another, who may not even have heard of what the first was doing, you are bound to get into some rather involved law. In law school you will study the law of agency (each partner is an agent for the others) in detail. It is hard going. Books have been written about some of the "whys" of the law of agency. (Why, for instance, if a store's delivery truck strikes a pedestrian, is the store's owner liable for damages? After all, he hired the best driver he could find, bought a good truck, kept it in good repair, and day after day dinned into the driver's head that he must never exceed the speed limit. Why, then, should he be liable if the driver does so and hurts someone in the process? Yet the owner is liable today, in all States, if the driver has been negligent and the pedestrian not.) At any rate, your law school study has given you an excellent groundwork in the law of agency, but no more. In fact, if it has done that much it has done well.

But now, as a practical matter, how do you go about forming a partnership? What do the partners sign; A partnership agreement? What goes in the agreement?

At this point, if the young lawyer is well advised, he will turn to a booklet published at a modest cost by the Joint Committee on Continuing Legal Education of the American Law Institute and the American Bar Association. Here he will find an invaluable guide to the whole partnership organizational process, the facts to be ascertained. For example, are the partners each to devote full time to the business? To what extent may they engage in other activities? The legal problems involved are also discussed, and, finally, the forms to be followed in setting up the organization, together with an explanation of the various clauses employed, plus some very sage counsel to the effect that no form should ever be slavishly followed but that it should be modified, as necessary, to conform with the laws of different States. In addition, as you may have suspected, another little booklet has been published by the same group on the "Federal Income Taxation of Partners and Partnerships." (Take every
course offered in your law school, and, before that, get a good course in accounting.)

Why isn't all of this given in law school? One answer is that there isn't time. Why not take time? Because there's a limit on how long we should keep young people in schools, for one thing. For another, while this is the sort of thing you can dig out for yourself, it would be almost impossible to dig out for yourself the scope of some of the basic agency concepts. In short, in law school you are constantly learning the law's reasons. But in practice you must learn that law's operations. In school you learn why you have the law. In practice you learn how to live under it.

A part of continuing legal education, then, is a bridge-the-gap (between school and practice) operation. Not always, however, need the young lawyer rely solely upon printed aids for this purpose. Under the leadership of a joint committee of the American Law Institute and the American Bar Association, a national program of continuing education of the bar is being developed, and is in operation now in many States. It encourages the use of printed materials, of course, but also utilizes other means, ranging all the way from graduate law programs for credit, to shorter programs in summer schools, evening courses, local bar lectures, panel discussion, "institutes," seminars, and other instructional meetings of various types.

Young Lawyers Seminar

An excellent example of the how-to-do-it course is the Young Lawyers Seminar recently conducted under the leadership of Professor Charles W. Joiner of the Law School of the University of Michigan by the Institute of Continuing Legal Education. It lasted for three days of intensive study. Distinguished judges, administrative officials (for example, the Director of the Workmen's Compensation Department of the State of Michigan), and lawyer-specialists in various fields lectured on assigned topics. They included real-estate transactions, domestic relations, workmen's compensation, wills and estates, office management and ethics, criminal actions, col lections (many young lawyers do bill collecting for various companies), negligence, and trial techniques. Now, as you may have noticed, these are mostly all law-school studies. Real property, for instance, is a required course in all schools. What is studied, then, at the Young Lawyers Seminar? A great number of extremely important practical details are learnt at the seminar. You are told where the "closing" (this, as we have seen, means the payment of the money by the new owner and the delivery of the deed to him) takes place, what papers should be prepared and ready for signature upon the closing (with blank forms of each), what the "closing statement" contains and who makes it up, what fees and expenses and costs should be paid and by whom.

(About taxes, for instance: If the purchaser does not buy until Thanksgiving and taxes are due to be paid on New Year's Day, should the purchaser have to pay the whole shot?) The same thing is done with respect to the other topics, and, when it is all over, the young lawyer takes back to his office with him not only much self-confidence he didn't have before, but three fat loose-leaf notebooks full of mimeographed instructions in each of the subjects covered, plus actual copies (in blank, of course) of each of the papers he has to work with.

A part of the problem of continuing legal education is how to do it. Of even greater importance to the bar generally is the problem of keeping posted, the staying abreast of the significant developments in law. Picture it yourself. Every week, every month, every year, the decisions pour out of our Supreme Courts, both State and Federal. If you had nothing else to do, if you did nothing but read new opinions during all your waking hours, it is doubtful if you could keep up with them. In addition, the leading legal periodicals should be reviewed, as well as the publication of your local bar association. It is, moreover, particularly important to keep up with the new laws for your State, passed each session by the legislature. But, you may ask. Though I can see the need for all this reading as far as the opinions and laws of my own State are concerned, why try to keep up with what they are doing in Illinois, for example? Because the law doesn't live in tight little boxes and you don't practice in a walled-off Chinese city. There are tides running in the law, as well as in the ocean, and you should be aware of them, otherwise you may find yourself (with your client) stranded, high and dry.

Periodically, then, you should (in what are sometimes called "perspective courses") review the growth, and possibly the decay or death, of the law generally, both inside and outside your own little bailiwick. A typical series of perspective courses, or keeping-up-to-date courses, would include materials in taxation, in commercial law-organizational problems,
secured transactions, bankruptcies, and workmen's compensation may be included, among others--trial practices, negligence cases, labor relations, and the drafting of legal instruments, such as wills, trusts, and corporate and real-estate transactions. Actually, reviewing afresh a field of law after the passage of a few years is like revisiting a once-familiar garden. When you return, after a substantial time, some of the plants will have died, some withered, and others grown strong and possibly dominant. The law, likewise, as we saw, is a living thing. Some of its doctrines die, unable to survive in today's climate (the spite fence, for instance). Some grow and flourish, for example, the liability of landowners for the acts of negligence toward trespassers, the problem we looked at in Lyshak. Of only one thing in the law may you be sure: Change.

But change also may take place suddenly rather than gradually. The legislature may see a problem requiring State-wide, or nation-wide, treatment; accordingly, comprehensive legislation is passed. Shortly after Pearl Harbor the national Congress passed a law popularly known as "the O.P.A." (Actually, the initials of the agency administering the act were O.P.A., for "Office of Price Administration," but the law itself gradually became known by these letters.) This law was designed to assist our fighting the war by stabilizing prices throughout the nation.

Overnight it became a dominant force in our economic life as businessmen all over the country began to live under a new set of rules. I don't have to tell you of the hours and hours of study the lawyers had to put in on that one. Another example may be seen in the field of labor law. Here the Wagner Act opened a whole new era in the relations between management and labor. The Internal Revenue Code forms a large volume in itself, and its interpretations occupy many more volumes. Other examples abound. These laws, and many others, are vast in sweep and intricate in operation. A lawyer in general practice needs much help with respect to them. It can come only from specialists in the various fields.

Their knowledge must somehow or other be funneled into the minds of practicing lawyers who have neither the time nor the opportunity to undertake on their own the necessary detailed analyses of the new legislation. This is another of the objectives in the program of continuing legal education.

But so far we have described the need for continuing legal education strictly in craft terms, devices to increase the professional competence of lawyers. This is important, of course. Technical proficiency of the highest a lawyer must have. But law isn't baseball. It's not enough to be a good pitcher, even a good all-around team player. For in addition to abundant technical competence a lawyer must have something else. It involves the public aspect of his profession.

The lawyer, as you now know, is an officer of the court, an integral part of the process of justice itself. Whether the law school can ever, with profit, do more in this area than acquaint the student with some of the most oft-met problems of legal ethics is debatable. It is only when the lawyer gets into active practice that he begins to comprehend fully the unique role he is playing in the life of the community. When justice fails a poor bum, lawyers in general feel the reproach of the responsible members of the community, even though only one or two of them were connected with the case.

When justice is delayed because of crowded dockets, each lawyer feels a share of the responsibility, though, indeed, his practice may never take him into court. When State legislators close their eyes to pressing social problems it is not, to the lawyer, an academic issue. When a lawyer sees a child taken from the only parents it has known for ten years and sent back to its natural parents, because of inadequate adoption laws, he has lived through something he wants never to see again. From now on he should, and probably will, make himself heard with respect to such laws.

An essential part of continuing legal education, then, is the development in the profession of a greater awareness of the responsibility of the profession to the public with respect to the administration of justice. Most of the problems of the profession, the critical problems, are nation-wide. Sometimes one State will move far out in front with respect to an attempted solution. For instance, there is much dissatisfaction with the law of contributory negligence. (Under the law of contributory negligence, you will recall, if you are 1 per cent at fault and the other man 99 per cent, you get no damages because your negligence "contributed" to the accident.) Some States have substituted for this the law of "comparative" negligence. Under
this law the man 99 per cent at fault would have to pay 99 per cent of the damages instead of getting off scot-free. How has this law worked where it has been tried? Would it work here?

Moreover, new methods are constantly being worked out to make trials more of a simple search for the truth than a sporting contest between opposing lawyers, with the clients sometimes forgotten. To eliminate surprises at the trial, and to make it move along faster, many States employ what is called the “pretrial.” The opposing parties, with their lawyers, meet with the judge before the trial and state their claims very simply. The real issues are highlighted. The phony ones are smoked out and abandoned. When the real trial takes place, it goes off much more quickly, and without the dramatic disclosure of some ace up the sleeve of one of the parties. Interestingly enough, many cases are settled on a fair basis when the real claims of the opposing parties are brought out into the open. Now, why not try this device of pretrial in our State? Has it any bugs? What are they?

In addition there are such problems as that of making legal services readily available to all who need it at a price they can afford to pay. Much has been done with respect to this problem in some States by what are called “lawyer referral” plans.

Would they work in our State? How about the problem of unauthorized practice of the law? What of the problem of obtaining widespread participation by the profession as a whole in the work of the organized bar?

We aren’t going to try to answer these questions. The point to remember from them is that beyond the craft or trade aspect of the profession we have a large area of public service, of public responsibility, and of public duty. An important function of the program of continuing legal education is to contribute to the individual lawyer’s realization of the extent of this area and his professional duties with respect to it. The 182 tradition of our profession cannot be met merely by good client care. There must, as well, be good public care.

Older lawyers have realized for years that our studies never stop, that our professional responsibilities ever grow. (This is really what is meant by the saying "The law is a jealous mistress." She demands more and more of our time, is increasingly grudging in acceding to the demands of other interests.) But only recently has the profession attempted to organize and systematize the continuing attention required both as to our private and our public responsibilities. This is really the significant program of continuing legal education. Get with it, when you can. You will grow in three ways: In how to do it, in perspective, and in realization of public responsibility.